

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 404 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARVINDBBAI SHANUBHAI RANA

Versus

MUNICIPAL CORPORATION OF BARODA

Appearance:

MR RD RAVAL for Petitioner

MR PRANAV G DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/04/97

ORAL JUDGEMENT

1. The petitioner, a Junior Clerk in the Health Department of Municipal Corporation, Baroda, filed this Special Civil Application and prayer has been made for quashing and setting aside the chargesheet dated 21st March, 1992, and the order of suspension dated 16-1-1993.
2. The petitioner was placed under suspension under the order dated 16-1-1993 in connection with the

departmental inquiry. He was given the chargesheet on 21st March, 1992. This Court has not granted any interim relief in favour of the petitioner against the order of suspension. On 21st January, 1993, the Court has observed that the proceeding of the inquiry is not stayed and the inquiry may be proceeded further. The report of ultimate decision of the inquiry may be placed on record of this petition before taking any action pursuant to such report.

3. It is not in dispute that the inquiry has already been completed and no further action pursuant thereto has been taken by the respondents. The challenge to the chargesheet by the petitioner directly before this Court is difficult to appreciate. The petitioner, in case committed any misconduct then the employer has all rights to give the chargesheet and the petitioner will have the opportunity to submit his defence therein and to take all other objections. The petitioner cannot be permitted to stall the departmental inquiry by filing this Special Civil Application before this Court at this stage. An inquiry has to continue and Inquiry Officer should be allowed to come to his conclusion, and what this court has exactly ordered in this case.

4. In view of the fact that the inquiry has already been completed and only the final order has to be passed in pursuant thereto in accordance with law, the challenge to the chargesheet, no more survives. The challenge to the order of suspension also does not survive at this stage when the inquiry is at the final stage. The final order has not been passed so far because of the pendency of this Special Civil Application, what the learned counsel for the respondents submit. The respondents' counsel undertakes that the inquiry shall be completed within a period of four weeks. The counsel for the petitioner submitted that this Court may give the directions to the respondents to consider his case sympathetically and the suspension which has been there of the petitioner for all these years should be treated to be a sufficient penalty for the alleged misconduct.

5. I do not consider it to be appropriate to go on this question because any finding given on merits may adversely affect the case of either of the parties. The petitioner has come up before this Court at the stage of giving of the chargesheet and it is not advisable for this Court to give any finding on the merits of the matter. Further no observation should be made by the Court when the matter is sub-judice before the disciplinary authority, otherwise it may influence by the

order of this Court. The inquiry has to be completed in accordance with law and the disciplinary authority should be set free to pass appropriate order in accordance with law. The petitioner's right is sufficiently protected as against the ultimate decision, in case it goes adverse to him, he has a right of appeal. However, I find sufficient justification in the prayer of the petitioner's counsel that in case ultimately the matter is decided against the petitioner, then the appeal filed by him may be disposed of expeditiously by the appellate authority. The counsel for the respondents very fairly conceded that in case ultimately any order adverse to the petitioner is made in the inquiry and against which, he prefers an appeal then the same will be decided by the appellate authority within a period of three months from the date of receipt of the appeal. In view of the concession of the counsel for the respondents nothing more now is to be directed to the appellate authority.

6. In the result, this Special Civil Application is disposed of in the terms that the respondents shall complete the inquiry within a period of four weeks from today. In case the ultimate order in the inquiry is made against the petitioner, then the appeal preferred by him, against the same, be decided by the appellate authority within three months as consented by the respondents' counsel. Rule stands disposed of in the aforesaid terms with no order as to costs.

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